

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
) File No. EB-08-IH-1508
) NAL/Acct. No. 200932080038
ARINC, Inc.)
) FRN No. 0007909054

Licensee of Various Wireless and Common
Carrier Authorizations

ORDER

Adopted: May 14, 2009

Released: May 14, 2009

By the Investigations and Hearings Division, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and ARINC, Inc. (“ARINC”). The Consent Decree terminates an investigation by the Bureau against ARINC for possible violation of section 310(d) of the Communications Act of 1934, as amended (the “Act”),¹ and Sections 25.119 and 1.948 of the Commission’s rules² in connection with the unauthorized transfer of control of various licenses and authorizations held both directly and indirectly by ARINC.

2. The Bureau and ARINC have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether ARINC possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act³ and sections 0.111 and 0.311 of the Commission’s Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

¹ 47 U.S.C. § 310(d).

² 47 C.F.R. §§ 25.119, 1.948.

³ 47 U.S.C. § 154(i).

⁴ 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to James Barker, Latham & Watkins LLP, 556 11th Street, N.W., Suite 1000, Washington, DC 2 0004.

FEDERAL COMMUNICATIONS COMMISSION

Hillary S. DeNigro
Chief, Investigations and Hearings Division,
Enforcement Bureau

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CONSENT DECREE

1. The Enforcement (“Bureau”) and ARINC Communications, Inc. (“ARINC” or the “Company”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation of ARINC’s compliance with Section 310(d) of the Communications Act of 1934, as amended (the “Act”),¹ and Sections 25.119 and 1.948² of the Commission’s rules³ relating to transfers of control of Commission licenses and authorizations.

I. DEFINITIONS

- 2. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) “ARINC” means ARINC, Inc., its predecessors-in-interest and successors-in-interest, controlling entities, parent, subsidiaries, and affiliates, and each of their respective officers, directors, employees, agents, representatives, or other person acting or purporting to act on behalf of ARINC.
 - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (d) “Carlyle” means Carlyle Partners IV Telecommunications L.P., TC Group IV, LP (the general partner of Carlyle Partners IV Telecommunications L.P.) and TC Group IV Managing G.P. LLC (the general partner of TC Group IV, LP), each of which is an indirect parent and controlling entity of ARINC.
 - (e) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) “Compliance Plan” means the program described in this Consent Decree at paragraph 15.
 - (g) “Effective Date” means the date on which the Commission releases the Adopting Order.

¹ 47 U.S.C. § 310(d).

² 47 C.F.R. §§ 25.119, 1.948.

³ 47 C.F.R. § 25.119.

- (h) “Investigation” means the investigation commenced by the Bureau’s November 4, 2008, Letter of Inquiry regarding whether ARINC violated section 310(d) of the Act and Sections 25.119 and 1.948 of the Commission’s rules in connection with the transfer of control of certain licenses held by ARINC.
- (i) “Order” or “Adopting Order” means an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (j) “Parties” means ARINC and the Bureau.
- (k) “Rules” means the Commission’s rules and regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

3. Section 310(d) of the Act requires that holders of FCC licenses or authorizations obtain a certificate of public convenience and necessity from the Commission before “transferr[ing], assign[ing] or dispos[ing] of [such licenses] in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license. . . .”⁴ In accordance with Sections 25.119 and 1.948 of the Commission’s rules, a transfer of a station license or wireless authorization by transfer of control of any corporation or any other entity holding such license requires application to and prior approval from the Commission.⁵

4. ARINC provides communications, engineering and integration solutions for commercial, defense and government customers worldwide. It holds or controls a non-common carrier earth station license/authorization, an international Section 214 authorization, seven private fixed microwave licenses and 154 private land mobile radio licenses. ARINC is ultimately controlled by Carlyle, which, on February 13, 2008, effectuated a corporate reorganization. As a result, an intermediate holding company indirectly controlling ARINC was replaced. The reorganization resulted in a *pro forma* transfer of control of licenses and authorizations held by ARINC requiring prior Commission consent pursuant to Section 310(d) of the Act and of Section 25.119 and 1.948 of the Commission’s Rules. ARINC did not request or obtain such prior consent. Approximately two months later, in April 2008, ARINC discovered and voluntarily disclosed the matter to the Commission. ARINC subsequently filed appropriate remedial applications with the Commission, all of which have since been granted.

5. Thereafter, the Bureau initiated its Investigation by directing a letter of inquiry to Carlyle requesting information about the February 13, 2008, transaction.⁶ Carlyle responded on November 19, 2008.⁷

⁴ 47 U.S.C. § 310(d).

⁵ 47 C.F.R. §§ 25.119(d), 1.948.

⁶ See Letter from Ben Bartolome, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Jennifer Hindin, Esq., Wiley Rein LLP, counsel for ARINC, dated November 4, 2008.

⁷ See Letter from James Barker, Esq., Latham and Watkins LLP, counsel for Carlyle, to Gary Oshinsky and Gary Schonman, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated November 19, 2008.

III. TERMS OF AGREEMENT

6. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

7. **Jurisdiction.** ARINC agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

8. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

9. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its Investigation. In consideration for the termination of the Investigation, ARINC agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in the Investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against ARINC concerning the matters that were the subject of the Investigation. The Bureau also agrees that it will not use the facts developed in the Investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against ARINC with respect to ARINC's basic qualifications, including its character qualifications to be a Commission licensee or authorized common carrier or hold Commission authorizations.

10. **Compliance Plan.** ARINC agrees that it will develop, within thirty (30) calendar days from the Effective Date, an internal Compliance Plan to ensure ARINC's future compliance with the Act, the Commission's rules, and the Commission's orders governing the assignment or transfer of control of FCC licenses and authorizations. The Compliance Plan shall include the following components:

- (a) **Compliance Training Program.** ARINC will establish an FCC compliance training program for any employee who engages in activities related to the purchase, sale, acquisition, assignment or transfer of control of companies, entities or assets subject to FCC regulation by or involving ARINC. Training sessions will be conducted at least annually for such employees to ensure compliance with the Act and the FCC's regulations and policies pertaining to assignments and transfers of control and, for new employees who are engaged in such activities, within the first sixty (60) days of employment. The Compliance Training Program will contain information for ARINC personnel regarding the need to conduct thorough due diligence regarding potential FCC licenses of any company in a potential merger or acquisition transaction, the need to monitor any corporate reorganization for potential license assignment or transfer issues, and the need to obtain prior FCC approval for all assignments and transfers of control of FCC licenses or authorizations.
- (b) **Review and Monitoring.** ARINC management will review the FCC Compliance Training Program annually to ensure that it addresses the objectives set forth herein.

- (c) **Parent Companies.** ARINC will work with **Carlyle** to institute internal controls that ensure future transactions that contemplate a change in control of ARINC companies are communicated to ARINC management in advance of any actual transfer of control and ensure the requirements of all appropriate regulatory authorities are timely satisfied.
- (d) **Annual Report.** Twelve months and twenty-four months after the Effective Date, ARINC shall submit an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of ARINC with personal knowledge of the representations therein, verifying that ARINC has complied with the terms of this Consent Decree. The declaration shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The declaration or affidavit must comply with section 1.16 of the Commission's rules, 47 C.F.R. § 1.16, and be substantially in the form set forth therein.
- (e) **Termination.** ARINC's obligations under this Paragraph shall expire twenty-four (24) months after the Effective Date.

11. **Voluntary Contribution.** ARINC agrees that it will make a voluntary contribution to the United States Treasury in the amount of Fifteen Thousand Dollars (\$15,000.00). The payment will be made within 30 days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the Order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to the Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank Federal Reserve Bank of New York, and account number 27000001. ARINC will also send electronic notification within forty-eight (48) hours of the date said payment is made to Gary.Oshinsky@fcc.gov.

12. **Waivers.** ARINC waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Commission issues an Order adopting the Consent Decree without change, addition, modification, or deletion. ARINC shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither ARINC nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and ARINC shall waive any statutory right to a trial *de novo*. ARINC hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

13. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which ARINC does not expressly consent) that provision will be superseded by such Commission rule or Order.

14. **Successors and Assigns.** ARINC agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

15. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding

any compliance or noncompliance with the requirements of the Act or the Commission's Rules and Orders.

16. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

17. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

18. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

19. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Hillary S. DeNigro
Chief
Investigations and Hearings Division, Enforcement
Bureau

John M. Belcher
Chairman and Chief Executive Officer
ARINC, Inc.

Date

Date